

THE WHITE HOUSE  
WASHINGTON

Civil Service Kevd 19 Jan  
Retirement Changes  
83-0054

# CABINET AFFAIRS STAFFING MEMORANDUM

DATE: 1-17-83 NUMBER: 077734CA DUE BY: 83-00523

SUBJECT: Cabinet Council on Legal Policy - January 19, 1983

8:45 a.m. in the Roosevelt Room

	ACTION	FYI		ACTION	FYI
ALL CABINET MEMBERS	<input type="checkbox"/>	<input type="checkbox"/>	Baker	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Vice President	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Deaver	<input type="checkbox"/>	<input type="checkbox"/>
State	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Clark	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Treasury	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Darman (For WH Staffing)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Defense	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Harper	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Attorney General	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Jenkins	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Interior	<input checked="" type="checkbox"/>	<input type="checkbox"/>	F. Fielding	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Agriculture	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Commerce	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Labor	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
HHS	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
HUD	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Transportation	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Energy	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Education	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Counsellor	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
OMB	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
CIA	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
UN	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
USTR	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
CEA	<input type="checkbox"/>	<input checked="" type="checkbox"/>	CCCT/Gunn	<input type="checkbox"/>	<input type="checkbox"/>
CEQ	<input type="checkbox"/>	<input type="checkbox"/>	CCEA/Porter	<input type="checkbox"/>	<input type="checkbox"/>
OSTP	<input type="checkbox"/>	<input type="checkbox"/>	CCFA/Boggs	<input type="checkbox"/>	<input type="checkbox"/>
ACUS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CCHR/Carleson	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	CCLP/Uhlmann	<input checked="" type="checkbox"/>	<input type="checkbox"/>
			CCMA/Bledsoe	<input type="checkbox"/>	<input type="checkbox"/>
			CCNRE/Boggs	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS: The Cabinet Council on Legal Policy will meet Wednesday, January 17, 1983 at 8:45 a.m. in the Roosevelt Room. The agenda and background papers are attached.

RETURN TO:

☐ Craig L. Fuller  
Assistant to the President  
for Cabinet Affairs  
456-2823

☒ Becky Norton Dunlop  
Director, Office of  
Cabinet Affairs  
456-2800

DCI  
EXEC  
REG

THE WHITE HOUSE  
WASHINGTON

CABINET COUNCIL ON LEGAL POLICY

January 19, 1983

8:45 a.m.

Roosevelt Room

AGENDA

1. Pension Equity for Women (CM#297)



Office of the Attorney General  
Washington, D. C. 20530

MEMORANDUM

January 17, 1983

TO: The Cabinet Council On Legal Policy

FROM: William French Smith, *WFS*  
Attorney General

SUBJECT: January 19, 1983 Meeting on Equal Pension Benefits and the Economic Equity Act

The Cabinet Council on Legal Policy (CCLP) will meet on Wednesday, January 19, 1983, to receive a briefing from T. Timothy Ryan, Jr., the Solicitor of Labor and chairman of the CCLP Working Group on Equal Pension Benefits (also known as the Manhart Working Group). As you all know, the question of equal pension benefits for men and women has received considerable attention within the Administration. It is now believed that an informational briefing of the Cabinet Council is desirable; no decisions will be reached at this meeting.

The briefing will review two subjects that the working group has been asked to examine: (1) whether and how to require employers to provide equal pension benefits to similarly-situated men and women; and (2) the Economic Equity Act (S. 888), a bill to amend the federal laws governing private pension plans and civil service and military retirement plans to help women receive greater retirement income. These subjects are discussed in detail in the attached reports from the working group, and are outlined in the following executive summary.

Equal Pension Benefits (Tab 1)

Since June 1982 the working group has been attempting to develop a unified government position on the questions of whether, and to what extent, an employer must ensure that the pension benefits its similarly-situated male and female employees receive are equal. This very complicated question -- involving Title VII of the Civil Rights Act of 1964, the Equal Pay Act, Executive Order 11246 (which imposes affirmative action and anti-discrimination obligations on federal contractors), the Internal Revenue Code, and the Employee Retirement Income Security Act of 1974 (ERISA) -- was highlighted, but not resolved, by the Supreme Court's decision in City of Los Angeles v. Manhart, 435 U.S. 702 (1978). The Court held that Title VII prohibits employers from requiring women to make larger contributions into a pension fund than men must make, even though the differential is based on the fact that women as a group have a longer life expectancy than men and thus tend to receive larger total pension benefits over

their lifetimes. The holding of Manhart was expressly limited to its facts. However, the Court used a broad rationale based on fairness to the individual rather than fairness to classes, and rejected actuarial distinctions as a justification for unequal treatment of men and women with regard to pensions.

The questions being studied by the working group thus derive from the established fact that women as a class live longer than men, a fact that pension plans frequently take into account. For example, monthly payments from annuities sometimes differ for similarly-situated men and women: an annuity that takes this actuarial difference into account will pay less per month to a woman than a man because she is expected to live longer (based on statistics for her sex as a class, not based on her own individual life expectancy). \*/ The nub of the discrimination problem is that individual members of a class do not have the same characteristics as that class in general has: i.e., an individual woman may not have the same life expectancy as the average woman -- and Manhart interpreted Title VII to require fairness to individuals, not to classes.

The working group first had to decide whether this difference in monthly payments constitutes sex discrimination in violation of Title VII. After much consideration the group concluded that it does. The government took that position in its January 10, 1983 filing in the Supreme Court in TIAA-CREF v. Spirt, 691 F.2d 1054 (2d Cir. 1982), petitions for cert. pending (Nos. 82-791, 82-913).

The large remaining question is how this equal pension benefits position should be implemented. The basic issues are (1) the degree of "retroactivity" of the equalization requirement, i.e., whether it applies to workers who have already retired, or to the benefits of future retirees which have accrued on the basis of past service; and (2) the manner of equalizing benefits, namely, whether the benefits of the currently disfavored sex must be raised to the level of the favored sex (called "topping up"), or whether a sex-neutral approach (which permits plans to set a benefit level in-between those previously provided the favored and disfavored sexes) can be used. Although there are numerous ways of combining these criteria, the working group has focused on four principal approaches:

---

\*/ Significantly, however, most pension plans offer equal monthly benefits under the normal benefit form (a life annuity); unequal treatment arises primarily where plans offer optional forms which are converted from the normal form on the basis of sex-segregated mortality tables. Ironically, men receive smaller payments under these optional forms, and 55% to 95% of the money spent to equalize benefits would go to male retirees (or their beneficiaries). The reasons for this counter-intuitive outcome are discussed in Section IV(B) of the report.

1. Requiring that total benefits of future retirees be calculated using sex-neutral actuarial tables.
2. Requiring topping up of benefit payments of the disfavored class.
3. Requiring the use of sex-neutral tables to calculate benefits attributable to future service, and topping up for benefits attributable to past service (a hybrid approach).
4. Requiring the use of sex-neutral tables for benefits accruing in the future.

The costs of these various approaches are highly relevant and are discussed in Section IV(B) of the report. Briefly summarized, the Labor Department estimates that the annual cost to private pension plans of approach (1) could be as much as \$181 million; approach (2), up to \$1.3 billion; (3), \$676 million; and (4), \$93 million.

Finally, the report outlines in Section V the means by which a government implementation policy might be effected: (1) Labor Department and EEOC regulations; (2) Title VII litigation; and (3) legislation prohibiting the use of sex-based actuarial tables (and other distinctions based on sex) in calculating pension benefits.

#### The Economic Equity Act (Tab 2)

The working group has only very recently begun to evaluate the Economic Equity Act, which was introduced as S. 888 early in the 97th Congress by Senator Durenberger, and has not reached any conclusions. The Act would amend the laws governing private pension plans (ERISA and the Internal Revenue Code) and those governing civil and military retirement plans. While the provisions are on their face sex-neutral, the real impact and purpose of the changes are to help women receive greater retirement income. The changes in ERISA and the Code aim to help two different groups of women: sections 102 (survivor annuities) and 103 (assignment of benefits) are designed to help older women whose income in retirement is dependent upon their husband's pension credits; sections 104 (lowering of participation age) and 105 (maternity benefits) are designed to help younger women earn their own pension credits. The changes affecting the military and civil service would provide a former spouse an entitlement to the other spouse's pension.

The working group report discusses each provision of the bill by setting forth the relevant current law, the changes proposed by the bill, and the advantages and disadvantages of those changes. The following is a brief summary of the key features of the bill:

Section 102 would require pension plans offering annuities as a form of benefit to provide for survivor annuities for participants with ten years vesting credit.

Section 103 would provide an exemption from ERISA's general prohibition against assignment or alienation of pension benefits for attachments for child support, alimony payments and marital property rights.

Section 104 would lower the minimum age requirement for participation in pension plans from 25 to 21.

Section 105 would require that pension plan participants who are out on maternity or paternity leave be given service credit of 20 hours per week toward participation, vesting and benefit accrual for up to 52 weeks.

Section 107 would accord a former spouse an entitlement to the other spouse's military pension based on marriage to the participant during the years the pension was earned. The entitlement would be similar to the entitlement currently provided to divorced spouses of foreign service officers.

\* Section 108 would provide spouses of federal civil service employees a pension entitlement similar to that granted military spouses under section 107.

Title V of the Economic Equity Act is identical to S. 2204, a bill which would prohibit the use of sex-based actuarial tables in calculating pension benefits. S. 2204 is discussed in Section V(B) of the working group's equal pension benefits report (Tab 1).

Attachments



Office of the Attorney General  
Washington, D. C. 20530

MEETING OF THE CABINET COUNCIL ON LEGAL POLICY

8:45 A.M.

January 19, 1983

AGENDA

TAB

1. Equal Pension Benefits
2. Economic Equity Act

1

2

## CABINET COUNCIL ON LEGAL POLICY

### Title I of the Economic Equity Act of 1981 (S. 888)

#### TABLE OF CONTENTS

I.	Background . . . . .	1
II.	Overview . . . . .	2
III.	Legislative Factors . . . . .	2
IV.	Individual Provisions . . . . .	2
	A. Section 102 -- Survivor Benefits . . .	3
	B. Section 103 -- Assingment/Alienation of Benefits . . . . .	7
	C. Section 104 -- Age 21 Participation .	8
	D. Section 105 -- Maternity/Paternity Benefits . . . . .	9
	E. Section 107 -- Military Retirement .	10
	F. Section 108 -- Civil Service Retirement . . . . .	12



## U.S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR  
WASHINGTON, D.C. 20210

MEMORANDUM FOR: CABINET COUNCIL ON LEGAL POLICY

FROM: T. TIMOTHY RYAN, JR. *TR*  
Solicitor of LaborSUBJECT: Title I of the Economic Equity Act of 1981  
(S. 888)

In late December 1982, the Manhart Working Group was asked to expand its agenda to include a review of Title I of S. 888, the Economic Equity Act of 1981. The Group has met twice to discuss the bill. This memorandum discusses the current law, the changes proposed by S. 888 and the advantages and disadvantages of the bill and estimates the costs.

It should be noted that while we have looked to date only at the limited proposals of S. 888, there are variations of these provisions, and there are other possible amendments to ERISA that would assist women more and/or impact less on pension plans.<sup>1/</sup>

In the discussion that follows, when dealing with provisions to help older individuals, we have assumed that the participant is the husband and the survivor or ex-spouse is the wife. Obviously, however, the provisions would apply equally in the reverse case where the female is the participant and the male is the non-participant. It should also be noted that the memorandum does not address the numerous technical drafting problems in the specific provisions.

I. Background

The Economic Equity Act of 1981 was introduced by Senator Durenberger (R. - Minn.), among others, early in the 97th Congress as S. 888. Similar bills were introduced in the House of Representatives. No action was taken on the bill at that time. It appears that there is considerable interest in the bill in the 98th Congress.

<sup>1/</sup> These changes could be fundamental, and highly controversial, ones such as five year vesting or they could be adjustments in the joint and survivor or break-in-service rules other than those proposed in S. 888.

## II. Overview

The provisions of S. 888 dealt with in this part (sections 102, 103, 104, 105, 107 and 108) would ammend the laws governing private pension plans (the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (Code)) and those governing civil and military retirement plans. While the provisions are on their face sex neutral, the real impact and purpose of the changes are to help women receive greater retirement income.

The changes in ERISA and the Code, which are described below, aim to help two different groups of women. Sections 102 (survivor annuities) and 103 (assignment of benefits) are designed to help older women whose income in retirement is dependent upon their husbands' pension credits. Sections 104 (lowering of participation age) and 105 (maternity benefits) are designed to help younger women earn their own pension credits. Section 107 (military retirement) and section 108 (civil service retirement) are also designed to help the older women whose retirement income is dependent upon their husbands' pension credits.

## III. Legislative Factors

There appears to be broad interest among Democrats and Republicans in both the Senate and the House in this bill or similar legislation. It appears unlikely, however, that these issues will be viewed separately. The 97th Congress enacted major pension changes in the Tax Equity and Fiscal Responsibility Act (TEFRA). It came very close to enacting further legislation involving the termination insurance program administered by the Pension Benefit Guaranty Corporation (PBGC) and consciously delayed until the 98th Congress other major pension issues. Congressional staff have already made clear that omnibus pension legislation is high on the agenda of both the labor and tax committees of both the House and the Senate in the 98th Congress. Thus, the pension provisions of S. 888 may become a "Christmas tree" for other pension legislation -- some of which the Administration might favor and others which could cause serious concerns unless narrowly drafted.

## IV. Individual Provisions

Following is a discussion of the provisions of S. 888. It should be noted that ERISA and the Code have duplicate provisions in these areas and therefore both must be amended. Further, the rules in ERISA and the Code are minimum requirements for pension plans. Employers may

include provisions in their plans which are more favorable to participants than the minimum requirements. Employers also are free not to establish a plan. Therefore, any requirement that employers meet greater minimum requirements could result in some employers terminating their pension plans totally because of the added cost or reducing other benefits to offset the higher pension costs. On the other hand, the higher minimum requirements assure that those employers who establish plans include in those plans provisions which meet certain "social goals" in return for the substantial tax benefits they receive.

#### A. Section 102 - Survivor Benefits.

##### Current Law:

- o A plan need not provide any survivor benefits option until the later of the early retirement age under the plan or the 120th month beginning before the employee reaches normal retirement age (age 55 in plans with age 65 normal retirement). (If there is no early retirement allowed under the plan, no survivor benefits need be included until the normal retirement age.) Thus, if the early retirement age under a plan is 55 and the husband dies at 54 after working under the plan for 30 years, the plan does not have to provide any benefit to the wife.

- o A married participant in a plan where an annuity is the normal form of benefit must receive that annuity in the form of a joint and survivor annuity unless the participant elects not to receive payment of the benefit in that form. This rule applies where the participant reaches normal retirement age (and retires or continues working) and, if the plan offers early retirement, where the participant retires on or after the later of age 55 or the early retirement age in the plan. If the participant continues working past the early retirement age and dies while working before normal retirement age, no benefits is provided the survivor unless the participant had specifically elected a survivor benefit.

- o The participant must be given an option of electing a survivor benefit (if he continues working past early retirement) or electing not to take a joint and survivor benefit in other cases. That election is made by the participant alone; there is no required consent of the spouse. Since a survivor option generally reduces the amount paid to the participant while he is alive, many husbands (in the normal case it is the husband who has earned the pension in the older age groups) do not tell their wives of their

election not to take a survivor annuity. The wife finds out only when the husband dies and the plan does not pay her benefits.

- o A plan may provide that if the participant dies (from non-accidental causes) within two years of an election of benefits that favors the surviving spouse, the election is nullified.

#### S. 888 Changes:

- o Once a participant has ten years vesting credit under a plan that offered an annuity as a form of benefit, the plan would have to provide for a survivor annuity.

- o The survivor annuity would be payable at the earliest time that the participant, if he had lived, could have begun receiving benefits under the plan. The amount of the survivor annuity could not be less than the amount that would have been paid had the participant lived, terminated employment (on the date of death) and then died with a survivor annuity the day after the earliest retirement date under the plan.

- o In all cases the survivor benefit would become the normal form of benefit when a plan offers an annuity. Thus the election option is always out of the survivor benefit.

- o The spouse would have to be informed of any election option not to take a survivor (or joint and survivor) benefit and agree to it in writing.

- o The two year rule for nullifying elections would be repealed.

#### Advantages:

- o Would provide retirement benefits to wives who planned their future needs based on their husband's living and retiring with a pension (with survivor benefits).

- o Would eliminate the "cliff" effect at age 55 (or 65); i.e. if the participant dies at 54 and 11 months the survivor need get nothing, but if he lives one more month the survivor benefit must be offered.

- o Would provide that the pension belongs to the family unit rather than only to the working spouse.

- o Would make the survivor benefit available in more cases, since individuals are less likely to elect away from the normal form of benefits.

- o Would provide the wife with knowledge of the retirement options.

- o Would allow participants and spouses retirement elections to be carried out immediately (without the two year wait).

#### Disadvantages:

- o There is a real cost to requiring a survivor option that must be borne by the employer, plan participants as a group, or the individual plan participant. (Current law allows plans to pass the early retirement survivor option to the participants. It appears S. 888 allows this to continue and extends it to the earlier survivor option of the bill.)

- o To the extent participants individually or as a group bear the cost of this option, the total amount of the pension benefit is reduced.

- o To the extent the employer bears the cost, it may reduce costs elsewhere. This reduction could come in lump sum death benefits under plans or life insurance outside plans because of the overlap of these benefits with survivor benefits. In such cases, the bill may just be trading a lump sum payment at death for deferred payments later.

- o Could result in employers not offering annuity options. Lump sum payments may not be advantageous to the financially unsophisticated.

- o In the case of the participant dying at a young age, the amount of the money involved may be quite small.

- o Would increase administrative costs for plans in several ways including assuring that the wife's signature is obtained on elections.

- o Would give the non-participant spouse a veto on any election away from a joint and survivor benefit.

- o May have the effect of creating a federal statutory override to state law in an area traditionally left to states, i.e. property law.

- o The elimination of the two year rule could lead to adverse selection where one spouse knows he or she is dying, thereby adding to plan cost.

- o There are many variations of this proposal and other changes in the joint and survivor rules that may be able to help women more and/or affect plans less that are not included in S. 888.

#### Cost Estimates:

- o The additional cost of a pre-early retirement survivor option ranges from \$92 - \$255 million for the first year. This estimate is based on a 1978 Hays Associates study of similar legislation.

- o The low cost estimate of \$92 million assumes that plans which currently offer and pay for the pre-normal retirement survivor benefits would face a .348 percent increase in current costs. It is estimated that 72 percent of pension plans currently absorb pre-normal retirement benefits.

- o The high cost estimate of \$255 million assumes that plans which do not currently provide pre-normal retirement benefits and plans which do but which pass on such costs to participants will be forced to absorb the full cost of pre-normal retirement survivor benefits as well as the cost of survivor benefits prior to early retirement. For these plans the additional cost is estimated at 2 percent of current costs.

- o The cost estimates represent approximately one-fourth to two-thirds of a percent increase in employer contributions under defined benefit plans (36.7 billion in 1978). It is estimated that while costs will increase over time the percent of employer contributions should remain relatively constant.

- o 99 % of workers in firms with 100 or more employees have employer life insurance coverage.

- o 31% of defined benefit plans currently provide a survivor benefit prior to early retirement age (either a lump sum, annuity, or deferred annuity).

- o The number of plans with a two year waiting period is unknown, therefore we cannot estimate the aggregate cost of this provision.

## B. Section 103 - Assignment/Alienation of Benefits.

### Current Law:

- o ERISA contains a general prohibition against the assignment or alienation of pension benefits.

- o The Departments of Labor and Treasury have taken the position and the courts have generally agreed that the anti-assignment clause does not apply to judicial decrees providing for support or alimony payments arising out of domestic relations proceedings.

### S. 888 Changes:

- o The bill provides a specific exemption for attachments for child support, alimony payments and marital property rights, but only if the attaching party provides the plan with a court order meeting certain specific requirements, e.g. that the order not require the plan to alter the timing, duration, form or amount of payments.

### Advantages:

- o Removes confusion of current law.
- o Allows plans to know when they can make payments directly to the attaching party without having to become a party to a court suit (in order to clarify whether they can legally comply).
- o Saves the plan legal costs.
- o Limits the variety of orders with which plans currently are being asked to comply.
- o Provides the spouse with right to a major marital asset directly from the plan.

### Disadvantages:

- o Could slightly increase plan administrative cost, especially if several ex-spouses are each to receive part of the benefit check.

### C. Section 104- Age 21 Participation.

#### Current Law:

- o An employee generally may not be denied participation in a plan by an age or length of service requirement, except that the plan can require one year of service and the attaining of age 25.

- o Under certain vesting rules, even if participation is denied until age 25, once the employee begins to participate vesting credit must be given back to age 22 (if the employee worked for the employer during that time).

#### S. 888 Changes:

- o Would lower the age requirement for participation to age 21.

#### Advantages:

- o Would provide women with pension credits for years in which their labor force participation rate is highest.

- o Not a large aggregate benefit cost to employers.

- o Would help both men and women who start with an employer at age 21 and stay with that employer long enough to vest. (This may be mostly men.)

#### Disadvantages:

- o Would increase plan administrative cost because of large job turnover at the age (median job stay for 16-24 age group is .7 years).

- o May not help very many women because few will ever vest. Thus without faster vesting the change is of limited benefit. Further, even if they do vest, the present value of the benefit is minimal unless they stay with that same employer for a substantial period of time.

- o Vesting credit already required to be given back to age 22. Seventy-four percent of participants in plans with ten year vesting requirements (90 percent of defined benefit plans) give vesting credit for all years of service once the employee becomes a participant. Thus, this will be of limited help to women in increasing vesting.



- o Seventy percent of defined benefit plans (61 percent of participants) have no age requirement. Any cost increase would affect those employers whose plans had the age 25 requirement. The administrative cost for this group can be expected to be higher than normal because the use of the age 25 criterion is adopted mostly by industries with young workers and high turnover to avoid large administrative costs.

#### D. Section 105 - Maternity/Paternity Benefits.

##### Current Law:

- o ERISA generally allows a plan to provide that no service credit is earned if the individual has not worked 1000 hours in a plan year.

- o If an employee works between 501 and 999 hours in a plan year, no service year must be counted, but the year is not considered a break in service. Breaks in service can result in loss of pension credits under certain circumstances.

- o Credit must be given for hours in which the employee was on sick leave, paid vacation, etc. Credit for such nonworking hours can be limited to 501 hours.

- o Credit need not be given for time on unpaid maternity or paternity leave. Therefore the participant may incur a break in service because of such leave.

##### S. 888 Changes:

- o Would require that participants who are out on approved maternity or paternity leave programs (and return to the employer) be given credit for 20 hours per week toward participation, vesting and benefit accrual for up to 52 weeks.

##### Advantages:

- o Would require that a participant on maternity or paternity leave receive pension credit for a specified amount of time. Not only would this prevent breaks in service during maternity leave, but it would provide the accrual of benefits during that period.

- o Would help a few women greatly (but not affect most women).

- o Designed to treat maternity leave in a similar fashion to veterans reemployment rights (where participation and vesting credit is earned; whether benefit accrual must also be given is being litigated).

#### Disadvantages:

- o Employers may decline to establish or will eliminate maternity or paternity leave programs because of the extra cost of such a program.

- o Extra cost to the employer who keep maternity or paternity leave programs. (Generally those subject to collective bargaining agreements.)

- o Will help only a very limited group of women (and men); those, however, could be helped substantially.

- o There are several variations of this which might help a large number of women and/or be less costly to employers.

#### E. Section 107 - Military Retirement.

##### Current Law:

- o Traditionally, divorced individuals have had no right to the military retirement benefits of their ex-spouses. This position was reinforced by the U.S. Supreme Court's 1981 decision in McCarty v. McCarty. In this decision the Court concluded that federal law governing military retirement pay preempts division of that pay in divorce proceedings pursuant to state community property law.

- o The effect of the McCarty decision was changed by an amendment to the 1983 defense authorization bill, H.R. 6030, signed by the President on September 8, 1982. (S. 888 was introduced prior to the enactment of H.R. 6030.) Under this amendment, state law governs the issue of whether military retirement pay is property subject to division upon divorce. A former spouse may receive payment for alimony, child support, or division of property out of retirement pay. The law applies, however, only where the marriage existed for at least ten years, and a former spouse may not receive more than 50 percent of disposable retirement pay. Although payments to the ex-spouse do not terminate upon remarriage of the ex-spouse, they do terminate when the military member dies, unless otherwise specified in the court order dividing the retirement pay. The courts may not order survivor

benefit coverage, but the military individual may provide it voluntarily.

**S. 888 changes:**

- o S. 888 would accord a former spouse an entitlement to the other spouse's military pension based on marriage to the participant during the years the pension was earned. Spouses who have been married to military personnel for at least ten years automatically would receive a certain proportion of the employee's annuity. The share to which the former spouse would be entitled would depend on the number of years of the marriage, in relation to the number of years of employment on which the employee's annuity were based.

- o Former spouses would be eligible for a pension of 50 percent of the employee's full annuity if the two had been married throughout the employee's career. The employee's annuity would be reduced by the amount of the annuity paid to the former spouse.

- o Provisions are similar to provisions enacted in 1980 for divorced spouses of foreign service officers.

**Advantages:**

- o Ex-spouses would receive pension protection without a court order.

- o Ex-spouses automatically would be entitled to a part of the former spouse's pension.

**Disadvantages:**

- o Would be viewed unfavorably by military personnel whose pension benefits would be reduced.

- o Goes further than private pension law, which does not recognize an automatic entitlement.

- o Military ex-wives eligible for social security dependent benefits already.

- o Large administrative cost.

- o Interferes with state property laws.

F. ~~Section 108: Civil Service Retirement.~~

Current Law:

o ~~Currently ex-spouses of federal employees are ineligible to receive retirement benefits based on the employment of the federal employee. Under a 1978 law, however, the OPM is required to comply with the terms of a divorce decree or property settlement of a federal employee who is under the civil service retirement system.~~

S. 888 Changes:

o The bill would make changes similar to those proposed for ex-spouses of military personnel, discussed in section 107.

Advantages and Disadvantages are similar to those discussed under section 107.